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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,886	06/01/2007	Donald A. Stevens	4417-062209	2358
28289	7590	12/13/2010	EXAMINER	
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				TRIGGS, ANDREW J
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
12/13/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/587,886	STEVENS, DONALD A.
	<b>Examiner</b>	<b>Art Unit</b>
	Andrew J. Triggs	3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 December 2010.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,4-10,12-17,21 and 22 is/are pending in the application.  
 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,4-10 and 12-17 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Double Patenting***

1. Applicant's arguments with respect to the Provisional Nonstatutory Double Patenting have been fully considered and are persuasive. The Double Patenting Rejections of claims 1, 2, 4-10, 12-13 and 17 have been withdrawn because one conflicting application has been abandoned and the other has been amended to no longer read on the pending claims.

### ***Claim Rejections - 35 USC § 112***

2. Claim 17 recites the limitation "the at least one resilient rib" in part a. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4-6, 8 and 14-16 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # 6,226,934 to Gaston.

Regarding claim 1, Gaston teaches, in Figure 10(c), a framing system (Column 1, Lines 11-16) since the landscape edge system can be used to frame a garden or walkway. The framing system has a plank member (60) having a front generally flat surface and an opposing back surface with at least one receptor pocket (80) extending therein. A frame member (20) of an underlying substructure has at

least one resilient rib (14) since it is formed from plastic (Column 6, Lines 53-60) protruding therefrom. The frame member (20) rib (14) is matable with the plank member pocket (80). The resilient rib (14) has a profile with a first side and a second side that diverge from one another as they extend away from the member (20) to which they are attached and converge to a tip at the furthermost extension of the rib away from the member. The maximum height of the rib occurs at the place of maximum divergence. The receptor pocket (80) has a minimum width less than that of the maximum height of the rib (14) so that the rib (14) may be captured in the pocket (80).

Regarding claim 2, Gaston teaches, in Figure 10(c), that the plank member (60) and frame member (20) are secured to one another through the engagement of the resilient rib (14) and receptor pocket (80).

Regarding claim 4, Gaston teaches, in Figure 10(c), that the first and second sides of the resilient rib (14) are spaced apart from one another to define a hollow interior.

Regarding claim 5, Gaston teaches that the material of the rib is capable of resilient bending (Column 6, Lines 53-60).

Regarding claim 6, Gaston teaches that the rib is made of a resilient material that is capable of compressing for resiliency (Column 6, Lines 53-60).

Regarding claim 8, Gaston teaches that the planks can be made from plastic (Column 11, Lines 6-20), thus being inherently resilient.

Regarding claim 14, Gaston teaches, in Figure 10(c), that the receptor pocket (80) is in the plank member (60) and the rib (14) is on the frame member (20).

Regarding claim 15, Gaston teaches, in Figures 10(a) and 10(b) that each plank member (65) interlocks with an adjacent plank member.

Regarding claim 16, Gaston teaches, in Figures 10(a) and 10(b), that each of the plank members (65) are overlapping with adjacent plank members.

5. Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent Application Publication # 2002/0066242 to Hsu.

Regarding claim 17, Hsu teaches, in Figure 4, a plank member (20) that has a front, *generally* flat surface since the peaks create generally flat walking surface and an opposing back surface with at least one resilient rib (231) protruding therefrom. The resilient rib (231) has a profile with a first side and a second side which diverge from one another as they extend away from the member (23) to which they are attached and then converge to a top at the furthermost extension of the rib (231) away from the member (23). The maximum height of the rib (231) occurs at maximum divergence. The rib (231) is adapted to be received within a receptor pocket within the concrete (1). The receptor pocket inherently has a minimum width less than that of the maximum height of the rib (231) or else the rib would not fit in the concrete. The plank is made from metal (Page 1, Paragraph 004) which would be somewhat resilient as long as the metal is not pushed past its yield point or fatigued too much.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 7, 9-10 and 12-13 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent # 6,226,934 to Gaston.

Regarding claim 7, Gaston teaches, in another embodiment, that the rib (14) is continuous between the first and second sides to define a solid rib (14). It would have been an obvious matter of design choice to modify the rib so that it is solid since applicant has not disclosed that a solid rib solves any stated problem or is of any particular purpose and it appears that a hollow rib would perform equally well. Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claim 9, as per claim 8, Gaston teaches that the planks can be made from plastic (Column 11, Lines 6-20), thus being inherently resilient. This allows the walls of the receptor pocket to be pushed apart in order to accommodate a rib.

Regarding claim 10, Gaston teaches, in Figures 3e, 3f, 3i, 3j and 3k that the rib can be barbed. It would have been an obvious matter of design choice to modify the rib so that it has a barb since applicant has not disclosed that a barbed rib solves any stated problem or is of any particular purpose and it appears that a resilient rib would perform equally well. Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claim 12, Gaston teaches, in Figure 10(c), that the receptor pocket (80) is in the plank member (60) and the rib (14) is on the frame member (20). However, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to have the pocket in the frame and the rib on the plank since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made.

Regarding claim 13, Gaston teaches, in Figure 10(ii), that at least one rib (91) is a separate piece. It would have been an obvious matter of design choice to modify the rib so that it is a separate piece since applicant has not disclosed that a separate rib solves any stated problem or is of any particular purpose and it appears that an integral rib would perform equally well. Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made.

#### ***Response to Arguments***

8. As shown above, the Applicant's arguments regarding the Double Patenting Rejection were persuasive and it has been withdrawn.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Triggs whose telephone number is 571-270-

3657. The examiner can normally be reached on Monday through Thursday 6:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew J Triggs/  
Examiner, Art Unit 3635  
/Basil Katcheves/  
Primary Examiner, Art Unit 3635